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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,945	07/24/2003	Dennis J. Jones JR.	60073.0004US01	3664
23859	7590	06/13/2006		
NEEDLE & ROSENBERG, P.C. SUITE 1000 999 PEACHTREE STREET ATLANTA, GA 30309-3915				
			EXAMINER OGDEN JR, NECHOLUS	
			ART UNIT 1751	PAPER NUMBER

DATE MAILED: 06/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/627,945

Applicant(s)

JONES, DENNIS J.

Examiner

Necholus Ogden

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 45-53, 68 and 69 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 45-53 and 68-69 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Response to Amendment***

***Oath/Declaration***

1. Applicant has submitted a new oath/declaration.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 45 and 53, 68-69 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement is withdrawn in view of applicant's amendment.

***Claim Rejections - 35 USC § 103***

4. Claims 45-50 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Lathauwer (5,738,688).
5. Claims 45-47 and 68-69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gamblin (4,482,646).
6. Claims 45-47 and 68-69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fekete (4,0984,701).

Fekete discloses an aqueous composition for cleaning tin surfaces comprising tannic acid in an amount from 0.01% by weight and greater (see col. 3, lines 1-8 and examples).

Art Unit: 1751

7. Claim 51 and 53 is rejected under 35 U.S.C. 103(a) as being unpatentable over De Lathauwer (5,738,688) in view of Jones, Jr. (5,520,962).

### **Double Patenting**

8. Claims 45-53 rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 62-67 of U.S. Patent No. 5,520,962 in view of De Lathauwer (5,738,688) is withdrawn in view of applicant's arguments.

### ***Response to Arguments***

Applicant argues that Gamblin, De Lathauwer, Fekete and/or Jones, Jr. do not suggest the gallic acid content of the claimed invention.

The examiner contends that the gallic acid content of the tannic acid components of the above listed prior art is silent, however, the burden is upon applicant to prove otherwise and it well known to the skilled artisan to optimize percentages, since gallic acid is acquired by the hydrolysis of tannic acid it would have been within the level of the skilled artisan to arrive at the gallic acid content absent a showing to the contrary commensurate in scope with the claimed invention. Moreover, by stating that any commercially available tannic acid can be used is a reasonable assumption that tannic acids of a range of gallic acid contents could be employed in a beneficial or synergistic manner.

"The normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages" Peterson, 315 F.3d at 1330, 65 USPQ2d at 1382.

Art Unit: 1751

With respect to applicant's Caustic 10 Total (Macbeth) table, it is the examiners position that the table is not unexpected because the prior art of record, specifically De Lathauwer, teaches that any commercial gallic acid may be used, which includes lower and upper amounts of tannic acid contents. Therefore, criticality has not been established since nothing unexpected is seen.

### ***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Necholus Ogden whose telephone number is 571-272-1322. The examiner can normally be reached on M-T, Th-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on 571-272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1751

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Necholas Ogden  
Primary Examiner  
Art Unit 1751

No  
6-11-06